RESPONSE TO COMMENTS

DRAFT HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT

U.S. ARMY FORT WAINWRIGHT

September 30, 2013

On June 27, 2013, the United States Environmental Protection Agency, Region 10 (EPA) opened a public comment period on a draft Hazardous Waste Management Facility Permit (draft Permit) to be issued to the U.S. Army Fort Wainwright (Army), EPA Identification number AK6 21002 2426. The draft Permit and Fact Sheet supporting the draft Permit were made available to the public at that time. The public comment period ran from June 27, 2013 to August 11, 2013. The Army requested a twenty day extension of the comment period. EPA extended the comment period for an additional twenty-four days. The extended comment period closed on September 3, 2013. EPA received timely written comments from the Army and from one private citizen.

Pursuant to 40 CFR § 124.17, a response to comments (RTC) must be prepared at the time a final permit decision is issued. The RTC is included in the administrative record (AR) for the final permit decision. New materials can be added to the AR through the RTC if new points are raised or new materials submitted during the public comment period. The final permit decision was issued on September 30, 2013 (Final Permit).

This RTC responds to all comments received from the public by the end of the comment period. EPA is responding in this RTC to the Army's formal written comments and to concerns embedded in emails received from the Army.

EPA's Responses: Please note that EPA numbered the comments received sequentially for ease of reference. Comments numbered 1 through 29 were prepared by Robert F. Gray, approved by Clifford Seibel, both of the U.S. Army Garrison Fort Wainwright, and submitted to EPA on August 30, 2013. Comments numbered 30 through 34 were submitted to EPA by Robert Gray on his own behalf and not on behalf of the Army on August 30, 2013. Comments numbered 35 through 36 were prepared by Joseph Malen, also of the U.S. Army Garrison Fort Wainwright and submitted to EPA on August 30, 2013.

Comment #1:

Page 1, INTRODUCTION: The first paragraph it states "a hazardous waste facility permit is hereby issued to U.S. Army Fort Wainwright (Permittee) for closure of an open burning/open detonation (OB/OD) unit, and for corrective action at all solid waste management units (SWMUs) at the U.S. Army Fort Wainwright Facility, geographically located in Fairbanks North Star Borough, at latitude 64 degrees 48 minutes 47 seconds North and longitude 147 degrees 34 minutes 38 seconds West (Facility)". This paragraph must be rewritten to accurately reflect the type of Part B Permit (shell permit) as well as CLEARLY stating when the permit becomes effective – upon the expiration of the U.S. Army Garrison Fort Wainwright (USAG FWA) Federal Facilities Agreement (FFA).

Response #1:

The Final Permit is a Hazardous Waste Management Facility Permit. The Final Permit includes permit conditions for the closure of a regulated hazardous waste management unit, the OB/OD unit, and provisions for facility-wide RCRA corrective action. There is no "shell" permit category in EPA rules or regulations and the Final Permit is not issued as a "shell" permit. The permit effective date is November 15, 2013. The permit effective date is not dependent on the expiration of the Federal Facilities Agreement, as amended (FAA), an agreement entered into by the Army and EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9601 9675. As EPA said in the Fact Sheet, "[T]he draft Permit updates the 1991 Permit, which expired on November 14, 2001. Once reissued, the draft Permit will be in effect for ten (10) years and will be reissued again as long as the OB/OD unit has not achieved final closure and/or corrective action has not been completed."

Comment #2:

Page 1, INTRODUCTION: Within this same paragraph there is reference to "U.S. Army Fort Wainwright Facility". Does this imply that the entire installation is the "facility"?

Response #2:

Yes. The entire installation is the "facility." A facility is defined under 40 CFR § 260.10 as: "(1) All contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them). (2) For the purpose of implementing corrective action under 40 CFR 264.101 or 267.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h)." The draft Permit

was proposed to complete site-wide corrective action as well as the delayed closure of the OB/OD unit. The Final Permit finalizes the same.

Comment #3:

Page 3, DEFINITIONS, "Open Burning/Open Detonation (OB/OD) Unit": Definition is incorrect, recommend using the following definition - The OB/OD area is within in the active small-arms impact area that was used by the Army and the US Air Force for disposing of unexploded ordnance (UXO), unused propellants (black powder), rocket motors, small-arms ammunition, and other military munitions.

Response #3:

EPA defined the Open Burning/Open Detonation (OB/OD) Unit in the draft Permit as: **"Open Burning/Open Detonation (OB/OD) Unit"** shall mean the area of the Fort Wainwright small-arms impact range formerly used by the U.S. Army Fort Wainwright for open burning/open detonation of hazardous waste." The commenter's suggested definition of the unit provides a better understanding of the unit. EPA made many of the recommended changes to the definition of the unit in the Final Permit as follows: "Open Burning/Open Detonation (OB/OD) Unit" shall mean the area within the active small-arms impact area that was used by the U.S. Army Fort Wainwright for disposing of unexploded ordnance (UXO), unused propellants, rocket motors, small-arms ammunition, and other military munitions, by open burning/open detonation of the aforementioned hazardous waste."

Comment #4:

Page 5, Paragraph I.A.I. , Effect of Permit: A comment must be added that clearly states that all SWMU's identified in the 1990 Resource Conservation and Recovery Act (RCRA) Facility Investigation were incorporated into the 1991 USAG FWA FFA for cleanup under the Defense Environmental Restoration Act (DERA) . The permit itself should not just mention, but fully "incorporate the terms, requirements and conditions of the FFA by reference". The FFA is the controlling document, not RCRA.

Response #4:

EPA incorporated the FFA by reference in the draft Permit and included the FFA as Attachment 7. The Final Permit did not change these provisions. The FFA is incorporated by reference in the Final Permit and included as Attachment 7. EPA does not agree that "the FFA is the controlling document, not RCRA." The FFA and the RCRA Permit dovetail in many respects. EPA gave considerable thought to the integration of the FFA and the Permit. The draft Permit and now the Final Permit include the following language which clearly explains how the FFA integrates into the RCRA corrective action:

> *The Federal Facility Agreement, U.S. Army Fort Wainwright Garrison Federal Facility Agreement, Docket Number 1092-04-10-120, as amended April 6, 2007 (FFA), entered into by the Permittee and the Administrator pursuant to § 120(e)(2) of CERCLA, is an existing mechanism currently being used to investigate and clean up releases of hazardous waste and/or constituents as necessary to protect human health and the environment at the Facility. Investigations and cleanups conducted under the FFA are expected to meet or exceed all applicable or relevant and appropriate state and federal requirements including RCRA. The FFA is incorporated by reference into this Permit and included as Attachment 7.*

The corrective action for the Facility will be satisfied by performance of actions pursuant to the FFA, except for those SWMUs not covered by the FFA as specified in paragraphs 1 and 2 below:

1. The Corrective Action permit conditions (Permit Conditions III.A through III.K, below), apply to: those SWMUs that the Parties to the FFA transfer to this RCRA Permit; newly discovered SWMUs formally identified as outside the scope of the FFA; and newly discovered SWMUs that are not expressly included in writing as within the scope of the FFA.

2. The Corrective Action permit conditions (Permit Conditions III.A through III.K, below) also apply to those SWMUs that are discovered or have not completed corrective action after termination of the FFA.

This language is almost identical to the language in the original Permit issued to the Army. The significant difference is the omission from the Final Permit of the provision that addressed the FFA coming into effect. As discussed in the Fact Sheet, the FFA came into effect and the omitted provision was not needed in the Final Permit. The provisions concerning SWMUs that are transferred to the Permit, to newly discovered SWMUs, and to SWMUs discovered after the termination of the FFA, are intended, as they were in the original Permit issued to the Army, to address situations that might arise at the Facility where the FFA would not be used as the primary mechanism to address corrective action.

Comment #5:

Page 5, Paragraph I.B. Permit Actions and Modifications: Subparagraph's I.B.1. , I.B.3 & I.B.3a identify that the full requirements of 40 CFR 270.42 are applicable. Since there are no Temporary Storage and Disposal Facility's (TSDF) the only applicable portions of 270.42 are applicable. All other sub-paragraphs of this regulatory citation must be specifically identified as not applicable:

D. *Closure*
J. *Landfills and Undisclosed Waste Piles*
O. *Burden Reduction subparagraphs 2, & 5.*

Response #5:

Section I.B of the Final Permit concerns Permit Actions and Modifications. This section contains the following conditions:

I.B. Permit Actions and Modifications
I.B.1. This Permit may be modified, revoked and reissued, or terminated for cause, as specified in 40 CFR §§ 270.41, 270.42, and 270.43.
I.B.2. Filing a request for a permit modification, revocation and reissuance, or termination, or filing a notification of planned changes or anticipated noncompliance on the part of the Permittee, does not stay the applicability or enforceability of any permit condition.
I.B.3. Except as provided by specific language in this Permit, any modification or change in a hazardous waste management practice covered by this Permit must be accomplished in accordance with 40 CFR § 270.41 or 270.42.
I.B.3.a. A written request must be submitted at least sixty (60) calendar days prior to any proposed change in Facility design or operation, or not later than sixty (60) calendar days after an unexpected event has occurred which has affected the Permit. The Administrator will approve, disapprove, or modify this request in accordance with the procedures in 40 CFR Parts 124 and 270.

I.B.3.b. If the Permittee determines that the corrective action and/or groundwater monitoring programs required by this Permit no longer satisfy the requirements of the regulations, the Permittee must, within ninety (90) days of such determination, submit a written request for a permit modification to make those changes deemed necessary to satisfy the regulations.

The conditions concerning permit modification are intended to cover potential scenarios broadly. Reference to the regulations at 40 CFR 270.42 means that the regulations will be applied as appropriate to the particular fact pattern. Since future fact patterns cannot be predicted, it would be inappropriate to cull out certain provisions of 40 CFR 270.42.

Comment #6:

Page 6, Paragraph I.D.I. Personal and Property Rights: This section must be rewritten to ensure that if improper guidance/direction is issued by the Agency (EPA, EPA Region 10 or its Alaska Operations Office) that financially impacts the Army that they are liable for the additional costs.

Response #6:

Permit Condition I.D.I states:

I.D.1. The Permittee shall hold harmless and indemnify the EPA and its officers, employees, and agents from any claim, suit, or action arising from the activities of the Permittee or its contractors, agents, or employees under this Permit.

This Permit Condition is a non-discretionary provision for RCRA permits. The changes requested cannot be made.

Comment #7:

Page 7, Paragraph I.F.I. Duty to Reapply: This paragraph must be rewritten to reference the USAG FWA FFA and is applicable upon the expiration of the FFA.

Response #7:

This Permit Condition states:

I.F. Duty to Reapply
I.F.1. If the Permittee wishes to continue an activity allowed by this Permit after the expiration date of this Permit, or if the Permittee is required to conduct post-closure care, or if the Permittee is required to continue corrective action obligations, the Permittee must reapply for and obtain a new permit, in accordance with 40 CFR § 270.10(h) and 270.30(b).
I.F.2. The corrective action obligations contained in this Permit will continue regardless of whether the Facility continues to operate or ceases operation and closes. The Permittee is obligated to complete facility-wide corrective action regardless of the operational status of the Facility.

The condition references corrective action and does not need to explicitly reference the FFA because the FFA is referenced in the corrective action section of the Final Permit. Moreover, as discussed above, there are corrective action scenarios to which the FFA does not apply either by choice or because the FFA will have terminated. The duty to reapply arises before the Permit expires and the expiration date is likely to arrive before the FFA terminates. No change to Permit Condition I.F.1. is needed.

Comment #8:

Page 8, Paragraph I.I. Duty to Mitigate: Identify this paragraph as Not Applicable. These actions are already covered in the FFA.

Response #8:

The Permit Condition states:

> ***I.I. Duty to Mitigate***
> *In the event of noncompliance with this Permit, the Permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts to human health or the environment. Such mitigation shall not be a defense to an enforcement action.*

The Permit Condition is important, in addition to the FFA, to ensuring that human health and the environment are fully protected. The FFA does not expressly require the mitigation steps that are required in this condition.

Comment #9:

Page 8, Paragraph I.J. Proper Operation and maintenance: The first sentence of this paragraph identifies that "The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) to achieve compliance with the conditions of this Permit". Since this Permit has no actual facilities or operations directly related to action this paragraph is not applicable and should be heavily edited or identified as Not Applicable.

Response #9:

The Permit Condition states:

> ***I.J. Proper Operation and Maintenance***
> *The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) to achieve compliance with the conditions of this Permit. Proper operation and maintenance includes, but is not limited to, effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance/quality control procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems to maintain compliance with the conditions of this Permit.*

This is a standard permit condition applicable to all RCRA permits. This Condition applies to the OB/OD unit and to the SWMUs at Fort Wainwright. Although the OB/OD unit is not currently in operation and is awaiting delayed closure, it must nevertheless be maintained. For example, the fence which restricts access to the unit must be maintained and personnel must be trained in specific safety protocols to ensure protection of human health. The SWMUs must also be maintained to protect human health and the environment. Although the FFA is the primary document for corrective action at Fort Wainwright, the inclusion of this provision ensures enforceability through RCRA and the Federal Facilities Compliance Act (FFCA).

Comment #10:

Page 8, Paragraph I.J. Proper Operation and maintenance: The last sentence of this paragraph states "This provision requires the operation of back-up or auxiliary facilities or similar systems to maintain compliance with the conditions of this Permit". Since there are no facilities identified for inclusion in this Permit this paragraph is not applicable and should be heavily edited or identified as Not Applicable.

Response #10:

See Response to Comment #9, above.

Comment #11:

Page 9, Paragraph I.L.4. : This paragraph is not applicable until the expiration of the FFA. Rewrite to reflect this point.

Response #11:

The Permit Condition states:

> *I.L.4. Sample or monitor, at reasonable times, for the purposes of assuring permit compliance, or as otherwise authorized by RCRA, at any location.*

This is a standard permit condition applicable to all RCRA permits. It allows EPA to look at RCRA permit compliance at the permitted facility and helps to ensure RCRA enforceability and protection of human health and the environment through the RCRA mechanism of the permit, whether or not the FFA, a CERCLA mechanism, is in effect.

Comment #12:

Page 11, Paragraph I.Q. et.al: The Agency must clarify this entire section (I.Q. thru I.Q.3.). These requirements are already required by the Alaska Department of Environmental Conservation Discharge Notification and Reporting Requirements addressed in 18 AAC 75.300-307 and Alaska Statute AS 46.03.755.

Response #12:

RCRA is federal law and is independently applicable and directly enforceable in Alaska notwithstanding the existence of Alaska state law concerning notification and reporting requirements for discharges. There is no basis to change this section of the Permit.

Comment #13:

Page 12, Paragraph I.R. Other Noncompliance: This paragraph is not applicable until the expiration of the FFA. Rewrite to reflect this point.

Response #13:

This Permit Condition states:

> ***I.R. Other Noncompliance***
> *The Permittee shall report to the Administrator on an annual basis all instances of noncompliance not reported under other requirements of this Permit. The reports shall contain the information listed in Permit Condition I.Q.*

RCRA is applicable to Fort Wainwright at the present time and is not dependent on the expiration of the FFA. There is no basis to change this condition.

Comment #14:

Page 12, Paragraph I.T. Biennial Report: This paragraph is not applicable because the requirement is already a requirement of a large quantity hazardous waste generator. Identify as not applicable.

Response #14:

The condition states:

> ***I.T. Biennial Report***
> *The Permittee shall comply with Biennial Report requirements of 40 CFR § 264.75.*

The Final Permit has been revised to eliminate this requirement because the OB/OD unit, although active as defined by RCRA, is not operating.

Comment #15:

Page 13, Paragraph I.X. et al Documents to be Maintained at the Facility: Because this Draft Part B Permit is not for a TSDF the following sub-paragraphs are not applicable and reference to them must be deleted or clearly identified as not applicable: I.X.2., I.X.3., I.X.4., I.X.6, I.X.7., I.X.8., I.X.9. & I.X.10.

Response #15:

The Permit is for closure, although delayed, of a treatment and disposal unit, the OB/OD unit, in addition to facility-wide corrective action. As such, the paragraphs identified by the commenter are applicable and will not be deleted or identified as inapplicable. There is no basis to change the conditions.

Comment #16:

Page 15, Paragraph II.B. Amendment of Closure Plan: This paragraph is not applicable until the expiration of the FFA. Rewrite to reflect this point.

Response #16:

The closure of the OB/OD unit is dependent on the closure or discontinuation of operations of the small arms impact range (Range) within which the OB/OD unit is located and is unrelated to the expiration of the FFA. Operation of this Range is not dependent on the expiration of the FFA. The closure plan for the OB/OD is required to be amended when use of the Range will cease. Cessation of Range use could come at any time before or after expiration of the FFA. There is no basis to change this Permit Condition.

Comment #17:

Page 15, paragraph II.D. Disposal or Decontamination of Equipment, Structures, and Soils: This paragraph states "The Permittee shall decontaminate and/or remove and dispose of all contaminated equipment, structures, and soils, as required by 40 CFR 264.114 and the approved revised closure plan". As a "Shell" Permit there are no structures referenced or included and this wording must be removed. Furthermore the remainder of this section is not applicable due to the requirement being fully identified in the applicable Records of Decision for the individual Operational Units. Make the appropriate corrections to reflect this status.

Response #17:

The unit to be closed, the OB/OD unit, may have equipment, structures and soils to be decontaminated and/or removed and disposed of at the time of closure. However, to address the commenter's concern that there may not be structures to be addressed in the closure of the OB/OD unit, the Permit Condition has been changed to state: "The Permittee shall decontaminate and/or remove and dispose of all contaminated equipment, structures and/or soils as required by 40 CFR 264.114 and the approved revised closure plan." This Permit is a permit for the closure of the OB/OD unit and for facility-wide corrective action. There is no permit category in the RCRA regulations or statute called a "shell" permit. The Permit is tailored to facility-specific needs for Fort Wainwright and integrates closely with the ongoing CERCLA activities. The Record of Decision (ROD), a CERCLA document, which addresses closure of the OB/OD unit is the ROD for Operable Unit (OU) 5. Section 9 of that document provides the decision made at the time the OU 5 ROD was signed in 1999. The following language with respect to closure is pertinent:

> *9.5 OB/OD Area Closure*
> *The OB/OD area is being treated administratively as part of OU 5 as agreed by the EPA, ADEC, and Army in the 1992 FFA. This ROD selects the final remedial action for OU 5, as well as the EPA decision under RCRA hazardous waste closure of the OB/OD area at this time. The EPA, ADEC, and Army are electing to combine actions under RCRA and CERCLA primarily because the OB/OD area is administratively subject to RCRA closure authority; however, the OB/OD area is also a specified source area in OU 5, which is subject to CERCLA authority. Moreover, the OB/OD area is within the active firing range where residuals of explosives remain. By applying CERCLA authority concurrently with RCRA closure through this integrated plan, the EPA, ADEC, and Army intend to minimize response costs and maximize protectiveness.*
>
> *This ROD for OU 5 integrates RCRA corrective action and the CERCLA remedial action processes for describing and analyzing corrective and remedial alternatives. To fulfill the requirements for the RCRA closure process, the Army will submit a closure plan in accordance with procedures described in Section 9.6.*

9.6 Closure Process

The OB/OD area was identified in the 1991 Federal Facility Compliance Agreement (FFCA), signed by the Army and EPA, as a RCRA-regulated land-based unit. As such, the OB/OD area is subject to the interim status standards codified in 40 CFR 265. Under the 1991 FFCA, the Army was required to submit a closure plan and a post-closure plan for this unit in compliance with the interim status standards for closure codified in 40 CFR 265, Subparts G and P. In addition, pursuant to the terms of the 1992 CERCLA FFA, the Army, ADEC, and EPA agreed that RCRA corrective actions required at solid waste management units at Fort Wainwright would be integrated with any ongoing CERCLA response actions, but also agreed that such integration efforts would not relieve the Army of responsibility for other hazardous waste activities for which federal law remained fully applicable. The integration of RCRA corrective action and CERCLA response actions does not relieve the Army from meeting RCRA closure and post-closure obligations for regulated units.

Although the OB/OD area is not currently active, EPA believes it is appropriate to allow final RCRA closure of the OB/OD area concurrently with final clearance of the operating range. Because the OB/OD area is physically part of the operating range and because it is anticipated that UXO will continue to be present at the operating range, RCRA closure at this time would be technically complex, with little, if any demonstrable environmental benefit. The EPA is approving a delay of closure of the OB/OD) area in accordance with 40 CFR 265.113(b)(1)(i). Delay of closure under this provision is subject to the requirements of 40 CFR 265.113(b), which states, among other things, that final closure, by necessity, will take longer than 180 days to complete.

Additionally, the facility must take, and continue to take, all steps to prevent threats to human health and the environment from the unclosed, but not operating, hazardous waste regulated unit, including compliance with applicable interim status requirements, 40 CFR 265.113(b)(2). The Army has indicated, and the EPA agrees through the signing of this ROD, that the OB/OD) area meets the requirements for an extension of time for closure specified in 40 CFR 265.113(b)(1)(i), provided that a draft interim closure plan and draft interim postclosure plan acceptable to the EPA is completed by the Army as specified below. The Army will submit, within 320 days from the date this ROD becomes final, a draft interim closure plan and draft interim post-closure plan for the OB/OD area that meets the requirements specified in 40 CFR 265, Subparts G and P. The draft interim closure plan and draft interim post-closure plan will be developed and completed in accordance with the procedures for submittal and review of primary documents specified in Paragraphs 20.12 through 21.11 of the 1992 FFA. Final closure will occur under the authority of the 1991 FFCA, RCRA, and its implementing regulations.

No less often than during the CERCLA 5-year reviews, the Army will evaluate whether delay of closure is no longer viable for one of the following reasons:

- *The active range is no longer operating.*
- *The post is being closed.*
- *Any other reason.*

The findings of this evaluation will be submitted to the EPA for review and approval. If either the EPA or the Army believe that delay of closure is no longer viable, the OB/OD area will be closed under the substantive and procedural RCRA closure requirements in effect at that time, and at that time, the Army will revise and resubmit the draft closure plan and draft post-closure plan for the OB/OD area to the EPA for review and approval. Upon approval of the final closure plan and final post-closure plan, the Army will close the OB/OD area in accordance with the terms and conditions of that final closure plan and final post-closure plan. In addition, the Army may elect to close the site under 40 CFR 265, Subparts G and P, at any earlier time. This closure also will require compliance with all substantive and administrative closure requirements, including EPA approval. (Emphasis added.)

At the time the ROD was signed in 1999, EPA treated the OB/OD unit as an interim status unit. However, with the issuance of the Final Permit, and as described in the draft Permit and Fact Sheet, EPA is exercising its RCRA authority to permit the OB/OD unit and, consistent with that decision, to apply the 40 CFR Part 264 standards to the unit rather than the interim status standards at 40 CFR part 265. EPA is continuing to integrate the decision in the ROD to delay closure in the Final Permit until the Range closes. The RCRA Permit does not change the inclusion of consideration of the closure decision in the Five Year Reviews of the ROD under CERCLA. Final closure, when it takes place, will take place in accordance with the closure regulations, including 40 CFR 264.114, for permitted facilities. The ROD clearly identifies the need to meet both RCRA and CERCLA requirements. For closure of a permitted regulated unit, those requirements are found in the Permit with reference to the facility standards in 40 CFR part 264. There is no basis to make other changes to this section of the Final Permit.

Comment #18:

Page 16, Paragraph II.E. Certification of Closure: This paragraph is not applicable until the expiration of the FFA. Rewrite to reflect this point.

Response #18:

The certification of closure is required when the OB/OD unit has been closed in accordance with the approved revised closure plan. Certification of closure is not dependent on the FFA. The event may occur before the expiration of the FFA if the Army decides to close the Range before that time. The paragraph is applicable and there is no basis to change this Permit Condition.

Comment #19:

Page 17, PART III. CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS: The first sentence of this paragraph states "The Permittee shall, pursuant to 3004(u) of RCRA and regulations codified at 40 CFR 264.101, institute corrective action as necessary to protect human health and the environment for the releases of hazardous waste and/or constituents from any SWMU at the Facility regardless of the time at which waste was placed in the unit". As clearly identified, all of the SWMU's identified the 1990 RCRA Facility Investigation were incorporated into the 1991 Fort Wainwright FFA for cleanup under the DERA. Since there have been no new SWMUs identified on USAG FWA since the original RCRA Facility Investigation (RFI) this paragraph is not applicable and this sentence removed.

Response #19:

Pursuant to RCRA, facility-wide corrective action and a schedule of compliance for corrective action must be included in RCRA permits. This paragraph integrates the RCRA requirements for corrective action with the FFA. This section addresses three distinct corrective action scenarios: (1) SWMUs being addressed under the FFA; (2) SWMUs to be addressed under the Permit because they are newly identified and not expressly determined in writing to be addressed under the FFA or for which a decision to address the SWMUs under the RCRA Permit rather than the FFA has been made in writing; and (3) SWMUs that might be identified after the expiration of the FFA. The Permit states:

> *The corrective action for the Facility will be satisfied by performance of actions pursuant to the FFA, except for those SWMUs not covered by the FFA as specified in paragraphs 1 and 2 below:*
> *1. The Corrective Action permit conditions (Permit Conditions III.A through III.K, below), apply to: those SWMUs that the Parties to the FFA transfer to this RCRA Permit; newly discovered*

SWMUs formally identified as outside the scope of the FFA; and newly discovered SWMUs that are not expressly included in writing as within the scope of the FFA.
2. The Corrective Action permit conditions (Permit Conditions III.A through III.K, below) also apply to those SWMUs that are discovered or have not completed corrective action after termination of the FFA.

The sentence will not be removed. The general language of the paragraph provides the statutory and regulatory basis for corrective action. The last sentence will remain because there are, or might be, SWMUs not addressed by the FFA as described in the permit language above.

Comment #20:

Page 17, PART III. CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS: The last sentence of this paragraph states "The corrective action for the Facility will be satisfied by performance of actions pursuant to the FFA, except for those SWMU's not covered by the FFA as specified in paragraphs 1 and 2 below". Since there have been no new SWMU's identified on USAG FWA since the original RFI this paragraph is not applicable and this sentence and paragraphs 1 and 2 removed.

Response #20:

As stated previously in this Response to Comments (RTC), there are several future scenarios where the FFA might not cover or address certain categories of SWMUs at Fort Wainwright. The Permit states in Part III, page 27:

The corrective action for the Facility will be satisfied by performance of actions pursuant to the FFA, except for those SWMUs not covered by the FFA as specified in paragraphs 1 and 2 below:
1. The Corrective Action permit conditions (Permit Conditions III.A through III.K, below), apply to: those SWMUs that the Parties to the FFA transfer to this RCRA Permit; newly discovered SWMUs formally identified as outside the scope of the FFA; and newly discovered SWMUs that are not expressly included in writing as within the scope of the FFA.
2. The Corrective Action permit conditions (Permit Conditions III.A through III.K, below) also apply to those SWMUs that are discovered or have not completed corrective action after termination of the FFA.

Paragraphs 1 and 2 in Part III will remain without changes.

Comment #21:

Page 18, Paragraph III.A.3. Standard Conditions: The requirements identified in this paragraph are already provided for under the FFA. Rewrite to reflect this point.

Response #21:

The standard condition in paragraph III.A.3 are conditions applicable to SWMUs that are not addressed under the FFA. These conditions are applicable to SWMUs that are described in the Permit as:

1. The Corrective Action permit conditions (Permit Conditions III.A through III.K, below), apply to: those SWMUs that the Parties to the FFA transfer to this RCRA Permit; newly discovered SWMUs formally identified as outside the scope of the FFA; and newly discovered SWMUs that are not expressly included in writing as within the scope of the FFA.

2. The Corrective Action permit conditions (Permit Conditions III.A through III.K, below) also apply to those SWMUs that are discovered or have not completed corrective action after termination of the FFA.

The Permit does not need to be rewritten because the conditions are necessary to protect human health and/ or the environment.

Comment #22:

Page 18, Paragraph III.B. Reporting Requirements et al: This paragraph and all of the associated subparagraphs (III.B.1., III.B.1.a, III.B.1.b., III.B.1.c.) are not applicable until the expiration of the FFA. Rewrite to reflect this point.

Response #22:

The commenter is incorrect in stating that paragraph III.B and associated subparagraphs not applicable until the expiration of the FFA. These conditions are applicable to those SWMUs that the Parties to the FFA transfer to this RCRA Permit, newly discovered SWMUs formally identified as outside the scope of the FFA, and newly discovered SWMUs that are not expressly included in writing as within the scope of the FFA. These conditions are also applicable to those SWMUs that are discovered or have not completed corrective action after termination of the FFA. Paragraph III.B. will not be rewritten. As it stands, the paragraph and all of the associated subparagraphs are protective of human health and the environment.

Comment #23:

Page 21, Paragraph III.E.1 RCRA Facility Investigation (RFI) Workplan: Rewrite this paragraph to acknowledge the 1990 RFI.

Response #23:

Paragraph III.E.1 states:

III.E.1. If the Administrator determines that an RFI is necessary for any newly-discovered or newly-created SWMU or for a newly discovered release under Permit Condition III.C. or III.D., or needed to further investigate an existing SWMU, the Permittee shall submit an RFI Workplan to the Administrator. The RFI Workplan must identify the SWMUs, releases of hazardous waste and/or constituents, and media of concern which require corrective action. The RFI Workplan, which must be approved by the Administrator, should be consistent with the EPA's current corrective action guidance, including RCRA Facility Investigation (RFI) Guidance, OSWER Directive 9502.00-6C, dated May 1989.

This paragraph addresses an RFI for newly-discovered or newly-created SWMUs or for newly discovered releases under Permit Conditions III.C or III.D or to further investigate an existing SWMU. A specific reference to the 1990 RFI for Fort Wainwright is not needed for these new SWMUs or releases. The Permit already includes as Attachment 6, the May 26, 2010, "Description of Solid Waste Management Units," a description of existing SWMUs. The list of SWMUs addressed in Attachment 6 is based on the 1990 RCRA Facility Assessment (RFA). For clarity, a notation has been added to Attachment 6 which references the 1990 RFA.

Comment #24:

Page 23, Paragraph III.G.1. Additional Interim Corrective Measures: Due to the strong potential for abuse of the Permittee by the Agency due to their failure to communicate internally this paragraph must be completely rewritten to provide the USAG FWA, the Permittee with documented assurance this will not occur. Additionally the immediate corrective actions available to the Permittee must be clearly identified.

Response #24:

EPA disagrees strongly with the commenter on this comment. EPA is not aware of any potential for abuse or actual abuse of the use of the Permit Condition referenced. As such, no change in the language of this condition will be made. Similar permit language has been used successfully at many facilities, both federal and private, to address releases or potential releases of hazardous waste and/or constituents. The Permit Condition states:

> *III.G.1. If at any time the Administrator determines that a release or potential release of hazardous waste and/or constituents at the Facility poses a threat to human health or the environment, the Administrator will notify the Permittee that it must submit a Workplan, including a schedule, for conducting Interim Corrective Measures designed to minimize the threat to human health and the environment. Upon the Administrator's approval of the Workplan, the Permittee shall implement the approved Interim Corrective Measures according to the approved schedule. Interim Corrective Measures are subject to the dispute resolution procedures in Permit Condition III.K. Implementation by the Permittee of treatment or containment activities during "immediate response," as defined in 40 CFR § 264.1(g) (2), to a discharge of hazardous waste and/or constituents, or an imminent and substantial threat of a discharge of hazardous waste and/or constituents, or a discharge of material which, when discharged, becomes a hazardous waste, is not subject to this Permit. Actions taken to address the discharge after the immediate response is completed are subject to this Permit.*

EPA cannot identify the immediate corrective actions that might be available to the Permittee because such actions are highly fact specific. EPA guidance is available to address many scenarios that might be encountered and probable solutions. The Permittee bears the burden of developing the plan to conduct interim corrective measures designed to minimize the threat to human health and the environment. The Permittee can discuss the workplan with EPA while the plan is being developed if the Permittee is concerned that it will have a difficult time identifying appropriate actions. However, the Permittee has enormous resources at its disposal to help with the technical analysis needed to develop appropriate and approvable workplans to address fact specific situations that might be encountered. No changes will be made to this Permit Condition. As it stands, the Condition is protective of human health and the environment.

Comment #25:

Page 23, Paragraph III.G.2.e. Additional Interim Corrective Measures: This sentence as written "Presence of hazardous waste in containers or tanks that may pose a threat of release" is not applicable. The USAG FWA has no hazardous waste storage tanks and all in-process hazardous waste containers stored on secondary containment or in bermed cells.

Response #25:

Paragraph III.G and all of its subparagraphs are included in the Permit to ensure that unforeseen contingencies can be addressed to protect human health and the environment from actual or potential releases at the Facility. Existing hazardous waste containers even if stored on secondary containment or in bermed cells might still pose a potential for an actual release or a threat of a release. There could also be tanks or

containers used in future activities to which this Permit Condition would apply. Note that although the commenter states that the Facility has no hazardous waste storage tanks at this time, the commenter does not say whether hazardous treatment or disposal tanks are located at the Facility. The sentence is appropriate as written and necessary for protection of human health and the environment.

Comment #26:

Page 26, Paragraphs III.K.1, III.K.1.a, III.K.1.b., III.K.1.c.III.K. Dispute Resolution: Rewrite these subparagraphs to provide definitive review times by the Agency. In the identified subparagraphs the Agency has identified hard and fast response times to the Permittee. In the matter of equability the Agency must establish their hard and fast review document/plan review time frames.

Response #26:

The commenter requests that EPA establish definitive review times to be followed during the dispute resolution process. This request is not unreasonable. Consequently, EPA changed the Final Permit as follows (new language is in bold for ease of reference):
III.K.1. No change needed.
III.K.1.a. The Administrator will **use best efforts to** notify the Permittee in writing of either a rejection with comments of a submission or modification of a submission **no later than sixty (60) days from the date the submission is received**.
III.K.1.b. Unless otherwise agreed to by the permitting staff, **EPA will use best efforts to hold** the meeting at the EPA Region 10's office in Seattle, Washington, or by teleconference, **no later than sixty (60) days from receipt of Permittee's written request to discuss the submission.**
III.K.1.c. No change needed.
III.K.1.d. If written arguments and evidence are submitted by the Permittee to the Decisionmaker, the Decisionmaker will **use best efforts to** resolve the dispute **no later than sixty (60) days from receipt of Permittee's written arguments and evidence.**

Comment #27:

Page 26, Paragraph III.K.1.d. Dispute Resolution: In the first sentence of this paragraph the word "promptly" is used in reference to the Decision maker. This work is vague and should be replaced with a formal, stated number of days to render a decision.

Response #27:

The commenter requests that the word "promptly" as used in the dispute resolution process be replace with a specified number of days. This request is not unreasonable. The Permit was revised as stated above in Response to Comment # 26.

Comment #28:

Page 26, Paragraph III.K.1.d. Dispute Resolution: The last sentence of this paragraph states that "The Decision maker's resolution of the dispute is not subject to administrative or judicial review". Due to the uniqueness of this "Shell" Permit and that the Department of Defense is the parent agency there must be a means of redress. Remove this sentence.

Response #28:

The commenter requests additional process beyond the dispute resolution process provided in the Permit. Judicial review of a dispute is not available to the Permittee or to EPA because both are federal entities and there can be no case or controversy between them to be reviewed. As to an additional administrative review process, the nature of the dispute, based in the need to conduct corrective action to protect human health and the environment, suggests that additional process would prolong action thus potentially prolonging an actual or potential threat to human health and the environment. EPA has decided, based on the premise that dispute resolution should mean just that, not to change this Permit Condition.

Comment #29:

Due to the Agencies stated comments regarding the uniqueness of the "Shell" Permit being imposed on the USAG FWA the usual paragraphs and statements for the most part are not applicable and the Agency must acknowledge this point and the extended period of time that the USAG FWA FFA is to be in effect, 30+ years. The Agencies "cookie-cutter" approach to the development cannot be used. This and the other specifically stated comments provided for the identified paragraphs and subparagraphs should be acknowledged and incorporated into the "Final Draft' Permit.

Response #29:

The Final Permit, like the draft Permit, was issued as a permit for the delayed closure of the OB/OD unit and for facility-wide corrective action. The Permit is expected, like most permits for RCRA corrective action, to be in place for many years. The Permit is not a "shell" but closely integrates the delayed closure of the OB/OD unit with the ROD for OU 5 and, as in the original Permit for the Facility, integrates RCRA corrective action with the FFA. This Permit is tailored to Fort Wainwright and does not represent a "cookie-cutter approach" but rather directly addresses the specific needs of the Facility.

Comment #30:

Given the austere budget climate for all Federal Agencies and that Fort Wainwright has a very thorough and complete Federal Facility Agreement how does EPA justify the expenses related to requiring this action of not only Fort Wainwright but also EPA.

Response #30:

The issuance of the RCRA Permit for Fort Wainwright is justified by the requirements of RCRA to ensure facility-wide corrective action at this permitted Facility.

Comment #31:

Why is this action being taken now given that the Fort Wainwright Federal Facility Agreement won't expire for another 30+ years?

Response #31:

The reissuance of the RCRA Permit for this Facility has been an ongoing concern for many years. Fort Wainwright submitted a complete Part B Application for this Permit in 2010 and EPA has been working toward issuance of a final permit since that time. As stated earlier, this RCRA Permit and the FFA dovetail by intent so that RCRA corrective action can be fulfilled without undue burden to the CERCLA action. The Final Permit, like the original Permit for the Facility, has been carefully designed to meet the requirements of RCRA while integrating the actions under the FFA.

Comment #32:

Wasn't the intent of CERCLA regarding clean-ups to allow for a phased yet thorough approach? In information provided to me it is my understanding the Open Burn/Open Detonation area originally addressed as a RCRA Solid Waste Management Unit in the1990 Fort Wainwright RCRA Facility Investigation was included within this FFA and placed under its appropriate Operable Unit? Why now the heavy handed approach by EPA against Fort Wainwright.

Response #32:

EPA strongly disagrees that EPA is taking a heavy-handed approach in reissuing a RCRA permit to Fort Wainwright. EPA does not construe the issuance of the RCRA Permit as approach against Fort Wainwright. EPA and Fort Wainwright had been engaged in discussions on the permit reissuance for many years. Fort Wainwright did not submit its application for the permit until 2010. As discussed earlier, the FFA and the original Permit, like the Final Permit integrate the actions under the FFA with RCRA corrective action obligations to the maximum extent. As to the integration of the OB/OD unit in the ROD for OU 5, please see Response #17, supra.

EPA is continuing to integrate the decision in the ROD to delay closure in the Final Permit until the Range closes. The RCRA Permit does not change the inclusion of consideration of the closure decision in the Five Year Reviews of the ROD under CERCLA. Final closure, when it takes place, will take place in accordance with the closure regulations, including 40 CFR 264.114, for permitted facilities. The ROD clearly identifies the need to meet both RCRA and CERCLA requirements. For closure of a permitted regulated unit, those requirements are found in the Permit with reference to the facility standards in 40 CFR part 264.

Comment #33:

If this type of action is so important that senior EPA Headquarters officials met privately with then Deputy Assistant Secretary of the Army, Mr.Tad Davis over 3 years ago why did Region 10 delay actions relating to this permit until now?

Response #33:

EPA considers the issuance of the RCRA Permit to Fort Wainwright to be very important. Senior EPA Regional and Headquarter staff did meet with Mr. Davis in 2010 to discuss the need to issue the Permit. It is EPA's understanding that Mr. Davis directed Fort Wainwright to prepare and submit a complete application for the RCRA Permit to EPA. EPA has worked toward permit issuance of this Permit since receipt of the complete application. EPA has juggled many high priority projects along with the Fort Wainwright Permit. EPA would not describe its actions toward the Permit as delaying actions, rather EPA has continuously applied time and resources toward this Final Permit along with many other high priority projects.

Comment #34:

A private citizen requested a public hearing be held in Fairbanks, Alaska. A separate response to that request was prepared by EPA and sent to the citizen on September 4, 2013.

Response #34:

EPA concluded that the request for a public hearing did not meet either of the criteria in 40 CFR § 124.12 concerning public hearings. Specifically, the request from the private citizen, the only request received, did not demonstrate that there was a "significant degree of public interest" in the proposed Permit, and EPA did not receive written notice of opposition to the draft Permit from any person. Although EPA has discretion to hold a public hearing if it might clarify one or more issues involved in the permit decision, given the longstanding nature of the communications surrounding the need for and implications of this Permit, EPA did not think a hearing would be helpful. The request was respectfully denied.

Comment #35:

The Army expressed concern "that the Draft RCRA Part B Permit as written conflicts with the authority and procedures defined in the Comprehensive Environmental Response, Compensation, and Liability Act (as amended); the National Contingency Plan (NCP); with the procedures agreed upon in the Ft.Wainwright Federal Facility Agreement (as amended) (FFA); and the Fort Wainwright, Alaska Operable Unit 5 Record of Decision."

Response #35:

The draft RCRA Permit does not conflict with CERCLA, the NCP or with the FFA. RCRA and CERCLA are both applicable at Fort Wainwright. As discussed above in response to this same comment, EPA, as in the original RCRA Permit for the Facility, integrated the Final Permit with the FFA so as to avoid conflicts between RCRA and CERCLA authorities and to minimize duplication of efforts. Please see Response #17 for the integration of the Permit and the ROD for OU 5.

Comment #36:

The Army requested a second extension to the public comment period. A separate response to that request was prepared by EPA and sent to the Army on September 4, 2013.

Response #36:

Based on EPA's review of the request for a second extension of the public comment period on the draft Fort Wainwright RCRA Permit, EPA denied the request. EPA provided a 45-day comment period when the draft Permit was issued for public comment on June 27, 2013. The Army asked for an extension to the comment period on August 11, 2013, just as the 45 day period came to a close. EPA immediately granted the Army's request and extended the comment period to September 3, 2013, more than the 20 days requested. The request for a second extension arrived at the beginning of the Labor Day holiday weekend just as the extended public comment period was coming to its close. Given the longstanding communications between EPA and the Army regarding the need for and implications of this Permit, EPA believed that a public comment period of more than two months was adequate and that it was important to move forward to finalize the Permit. The request for a second extension to the public comment period was respectfully denied.